

§ 803.9 Filing fee.

(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in paragraphs (b) and (c) of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice.

Examples: 1. “A” wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is \$64 million, pursuant to § 801.10. When “A” files notification for the transaction, it must indicate the \$50 million threshold and pay a filing fee of \$45,000 because the aggregate total amount of the acquisition is less than \$100 million, but greater than \$50 million.

2. “A” acquires \$40 million of assets from “B.” The parties meet the size of person criteria of Section 7A(a)(2)(B), but the transaction is not reportable because it does not exceed the \$50 million size of transaction threshold of that provision. Two months later “A” acquires additional assets from “B” valued at \$90 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii), the aggregate total amount of “B’s” assets that “A” will hold as a result of the second acquisition is \$130 million. Accordingly, when “A” files notification for the second transaction, “A” must indicate the \$100 million threshold and pay a filing fee of \$125,000 because the aggregate total amount of the acquisition is less than \$500 million, but not less than \$100 million.

3. “A” acquires \$60 million of voting securities issued by B after submitting its notification and \$45,000 filing fee and indicates the \$50 million threshold. Two years later, “A” files to acquire additional voting securities issued by B valued at \$50 million because it will exceed the next higher reporting threshold (see § 801.1(h)). Assuming the second transaction is reportable and the value of its initial holdings is unchanged (see § 801.13(a)(2) and 801.10(c)), the provisions of § 801.13(a)(1) require that “A” report that the value of the second transaction is \$110 million because “A” must aggregate previously acquired securities in calculating the value of B’s voting securities that it will hold as a result of the second acquisition. “A” should pay a filing fee of \$125,000.

4. “A” signs a contract with a stated purchase price of \$110 million, subject to adjustments, to acquire all of the assets of “B.” If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegate must also determine in good faith the fair market value. (§ 801.10(b) states that the value of an asset acquisition

is to be the fair market value or the acquisition price, if determined and greater than fair market value.) “A” files notification and submits a \$45,000 filing fee. “A”’s decision to pay that fee may be justified on either of two bases, and “A” should submit an attachment to the Notification and Report Form explaining the valuation. First, “A” may have concluded that the acquisition price can be reasonably estimated to be \$98 million, because of anticipated adjustments—e.g., based on due diligence by “A”’s accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than \$100 million, the \$45,000 fee is appropriate. Alternatively, “A” may conclude that because the adjustments cannot reasonably be estimated, acquisition price is undetermined. If so, “A” would base the valuation on the good faith determination of fair market value. The acquiring party’s execution of the Certification also attests to the good faith valuation of the value of the transaction.

5. “A” contracts to acquire all of the assets of “B” for \$1 billion. The assets include hotels, office buildings, and rental retail property with a total value of \$850 million, all of which are exempted by § 802.2. Section 802.2 directs that these assets are exempt from the requirements of the act and that reporting requirements for the transaction should be determined by analyzing the remainder of the acquisition as if it were a separate transaction. Furthermore, § 801.15(a)(2) states that those exempt assets are never held as a result of the acquisition. Accordingly, the aggregate amount of the transaction is \$150 million. “A” will be liable for a filing fee of \$125,000, rather than \$280,000, because the value of the transaction is not less than \$100 million but less than \$500 million. Note, however, that “A” must include an attachment in its Notification and Report Form setting out both the \$1 billion total purchase price and the basis for its determination that the aggregate total amount of the acquisition under the rules is \$150 million rather than \$1 billion, in accordance with the Instructions to the Form.

6. “A” acquires coal reserves from “B” valued at \$150 million. No notification or filing fee is required because the acquisition is exempted by § 802.3(b). Three months later, A proposes to acquire additional coal reserves from “B” valued at \$450 million. This transaction is subject to the notification requirements of the act because the value of the acquisition exceeds the \$200 million limitation on the exemption in § 802.3(b). As a result of § 801.13(b)(2)(ii), the prior \$150 million acquisition must be added because the additional \$450 million of coal reserves were acquired from the same person within 180 days of the initial acquisition. Because aggregating the

Federal Trade Commission

§ 803.10

two acquisitions exceeds the \$200 million exemption threshold, §801.15(b) directs that “A” will also hold the previously exempt \$150 million acquisition; thus, the aggregate amount held as a result of the \$450 million acquisition is \$600 million. Accordingly, “A” must file notification to acquire the coal reserves valued at \$600 million and pay a filing fee of \$280,000.

(b) For a transaction described by §801.2(d)(2)(iii), the parties shall pay only one filing fee. In accordance with §801.2(d)(2)(iii), both parties to a consolidation are acquiring and acquired persons and must submit a Notification and Report Form where the transaction meets the reporting requirements of that act; however, only one filing fee is required in connection with such a transaction, and is payable by either party to the transaction. The filing fee is based on the greater of the two sizes of transaction in the consolidation.

(c) For a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the same for items 5 through 8 of the Notification and Report Form, only one filing fee is required in connection with the transaction.

(d) *Manner of payment.* Fees may be paid by United States postal money order, bank money order, bank cashier's check, certified check or by electronic wire transfer (EWT). The fee must be paid in U.S. currency.

(1) Fees paid by money order or check shall be made payable to the “Federal Trade Commission,” omitting the name or title of any official of the Commission, and shall be submitted to the Premerger Notification Office of the Federal Trade Commission along with the Notification and Report Form.

(2) Fees paid by EWT shall be deposited to the Treasury's account at the New York Federal Reserve Bank. Specific instructions for making EWT payments are contained in the Instructions to the Notification and Report Form.

(e) *Refunds.* Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payer and no part of the filing fee

shall be refunded. The filing fee shall be refunded only if the Commission's staff determines, based on the information and representations contained in the filing person's notification, that premerger notification was not required by the act. Once the Commission's staff has determined that the notification was required, the filing fee shall not be refunded even if it appears at the time of consummation that the transaction does not meet the reporting requirements established in the act.

[66 FR 8695, Feb. 1, 2001]

§ 803.10 Running of time.

(a) *Beginning of waiting period.* The waiting period required by the act shall begin on the date of receipt of the notification required by the act, in the manner provided by these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with §803.3) from:

(1) In the case of acquisitions to which §801.30 applies, the acquiring person;

(2) In the case of the formation of a joint venture or other corporation covered by §801.40, all persons contributing to the formation of the joint venture or other corporation that are required by the act and these rules to file notification;

(3) In the case of all other acquisitions, all persons required by the act and these rules to file notification.

(b) *Expiration of waiting period.* (1) Subject to paragraph (b)(3) of this section, for purposes of Section 7A(b)(1)(B), the waiting period shall expire at 11:59 p.m. Eastern Time on the 30th (or in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), the 15th) calendar day (or if §802.23 applies, such other day as that section may provide) following the beginning of the waiting period as determined under paragraph (a) of this section, unless extended pursuant to Section 7A(e) and §803.20, or Section 7A(g)(2), or unless terminated pursuant to Section 7A(b)(2) and §803.11.

(2) Unless further extended pursuant to Section 7A(g)(2), or terminated pursuant to Section 7A(b)(2) and §803.11,